IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8909 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SINDELKUMAR KARUNANITHI MUDALIYAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

Mr. Sudhansu Patel, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 20/10/2000

ORAL JUDGEMENT

The petitioner who is at present under detention pursuant to the order dated 15th July 2000 passed by the Police Commissioner, Ahmedabad, exercising the power under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act (for short "the Act") calls in question the legality, validity, and constitutionality of the order passed.

2. The facts giving rise to this present petition

may in brief be stated. Against the petitioner 9 complaints with different police stations relating to the offences punishable under Section454, 457, 380, 379 came to be filed. The Police Commissioner when checked the record found that the petitioner was doing nothing for his livelihood and had indulged himself in commission of different criminal wrongs and mainly house breaking, house trespass and theft. He was considered to be the head-strong or a dangerous person in the society with the result no one used to come out and state against him because no one wanted to endanger his personal safety. The petitioner used to give threat to the people and by using coercive measures used to cause them bend to his way, and those who resisted had to face dire consequences because often they were put to imminent danger to life or property. The Police Commissioner therefore found that to check the nefarious activities of the petitioner going berserk and injurious to public order the only way out was to detain him under the Act passing appropriate order. He therefore passed the impugned order pursuant to which at present the petitioner is under detention.

3. The learned advocate representing the petitioner initially argued on different grounds so as to assail the order but when a query was made she tapered off her submissions confining to the only ground namely non-supply of documents prayed for. According to her on 28th July 2000 the representation was sent to the Secretary, Home Department, Gandhinagar whereby the petitioner also prayed for the copies of his statement and the statements given by Shyam Sherumal, K.G. Mahendra Tadvi, K.J. Vijay Panchal and Ishwarbhai Patel but those statements were not supplied even till today, with the result the petitioner was deprived of his right to make the effective representation and lost the right to defend effectively. In reply to such contention, Mr. Patel the learned A.G.P. submits pointing out the decision of this Court in Koli S.B. Parmar Vs. District Magistrate, Bhavnagar - 2000 (2) G.L.H. Page 540 that failure to furnish the copies of all the documents is not always fatal. The authority is bound to supply the copies of those documents on which the authority passing the order has relied upon. If by passing the order a reference of a particular document is made, or a casual or passing reference is made and if copies of such documents are not given it would not amount to infringement of Article 22 (5) of the Constitution and would not be fatal.

4. Under Article 22 (5) of the Constitution, the detenue must be supplied with the copies of the documents on which the authority relies upon while passing the

order of detention so that he can make effective representation and point out what the real facts are; and have his comments on the documents relied upon. In the case on hand, the petitioner's statement is missing in the bunch given which was as per the index ought to have been at Pages 39 & 40. It is the statement relied upon by the authority and of vital importance. As per the statement made on behalf of the petitioner, the said statement is not given, but the the learned A.G.P. submits that perhaps in order to have the order in his favour the petitioner might have played mischief taking out the statement from the brunch. It is also argued that the petitioner putting the endorsement acknowledged the receipt of all the documents formed part of the bunch from pages 1 to 268. When he has acknowledged the receipt of all the documents it is not open to the petitioner to come out with the say that he was not supplied with the copies of the statements. The contention cannot be accepted. The petitioner has in his representation dated 28th July 2000 specifically prayed for the copy of his statement and the statements of others referred to hereinabove. Of course the representation is rejected, but the petitioner after rejecting the representation is not informed specifically that the statements he was praying for were already supplied regarding which he had putting the endorsement acknowledged the receipt thereof. The authority has to if that is the reality refute the fact specifically. When specifically that fact is not brought to the notice of the petitioner bringing the same to challenge and conveniently while rejecting the representation on that point in question the authority has remained silent, what follows is that right from the very beginning the particular statement in the bunch was not there. I therefore cannot put the seal of approval to the contention that subsequently the petitioner might have played the mischief. When that statement is not supplied, the petitioner's right to represent is jeopardised.

5. With regard to the other statements, it is the submission that they were not made the base for passing the impugned order in question. May be that the statements were not made the sole base but as per the decision in the case of Koli S.B. Parmar (Supra), the petitioner is able to show that prejudice is caused to him because of the non-supply of such documents shrewdly not made the sole base, but referred to for the purpose of passing the order the copies thereof the copies ought to have been supplied so as to enable the detenue to make the representation effectively. Shyam Sherumal, K.G.

Mahendra Tadvi, K.J. Vijay Panchal, and Ishwarbhai Patel whose statements are recorded are alleged to be the eye witnesses to the incidents on the basis of which the complaints are filed. If those copies are therefore not supplied the petitioner would not be able to point out about his non-involvement in the aforesaid offences. The authority was therefore bound to supply the copies thereof. As the copies of those statements are not given, the right to represent effectively is jeopardised and therefore the impugned order is bad in law and the same is required to be quashed.

6. For the aforesaid reasons, the application is allowed. The impugned order dated 15th July 2000 passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith if no longer required in any other case. Rule is made absolute. D.S. permitted.

---

rmr.